

1 Drew E. Pomerance, Esq. (SBN. 101239)
2 Burton E. Falk, Esq. (SBN. 100644)
2 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP
3 5820 Canoga Avenue, Suite 250
3 Woodland Hills, California 91367
4 Telephone: (818) 992-9999
4 Facsimile: (818) 992-9991

5 Jeff Westerman, Esq. (SBN. 94559)
6 Sabrina Kim, Esq. (SBN. 186242)
6 **MILBERG LLP**
7 One California Plaza
7 300 South Grand Avenue, Suite 3900
8 Los Angeles, California 90071
8 Telephone: (213) 617-1200
9 Facsimile: (213) 617-1975

10 Attorneys for Plaintiff GARY DAVIS,
11 individually and on behalf of himself, and
as Private Attorney General and on behalf of
all others similarly situated

13 **UNITED STATES DISTRICT COURT**

14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 GARY DAVIS, an individual; on behalf)
17 of himself, and as PRIVATE)
17 ATTORNEY GENERAL, and on behalf)
of all others similarly situated,

18 Plaintiff,

19 v.

20 CHASE BANK U.S.A., N.A., a)
21 Delaware corporation; and DOES 1)
through 50, inclusive,

22 Defendants.

) Case No. CV 06 4804 DDP (PJWx)

(*Hon. Dean D. Pregerson, Courtroom 3*)

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

- (1) Violation of the Consumers Legal Remedies Act;
- (2) Violation of the *California Business and Professions Code Section 17200* et seq.: Unlawful and Unfair Business Practices;
- (3) Breach of Contract;
- (4) Breach of the Implied Covenant of Good Faith and Fair Dealing;

24 DEMAND FOR JURY TRIAL

25

26

27

28

EXHIBIT

D

1 Plaintiff Gary Davis, on behalf of himself and all other similarly situated, for
2 his complaint against CHASE BANK U.S.A., N.A. ("Chase Bank"), complains and
3 alleges as follows:

4

5 INTRODUCTION

6 1. This case arises from Chase Bank's fraudulent and unfair business
7 practice of charging its California credit card holders finance charges in connection
8 with purchases at Circuit City advertised as "no interest, no payment," "no interest
9 with minimum monthly payment," or "interest and payment free" (collectively
10 "Promotional Purchase"). Plaintiff, on behalf of himself and all individuals similarly
11 situated, seeks damages and equitable relief for violations of the California
12 Consumers Legal Remedies Act, the *California Business and Professions Code*
13 (Unfair Business Practices), for breach of contract and breach of the covenant of
14 good faith and fair dealing. Chase Bank's fraudulent and unfair business practices
15 violate the rights of unsuspecting California consumers throughout the state, for
16 which California consumer protection laws were designed.

17

18

THE PARTIES

19 2. Plaintiff, Gary Davis ("Plaintiff") is now, and at all relevant times was, a
20 resident of the County of Los Angeles, State of California.

21 3. At all relevant times, the class of Plaintiffs on behalf of which Plaintiff
22 is bringing this suit, were residents of the State of California. Such persons shall
23 hereinafter be referred to as the "Class" or "Class Members."

24 4. Plaintiff is informed and believes, and based thereon alleges that
25 Defendant Chase Bank ("Chase") is a corporation, organized and existing under the
26 laws of the State of Delaware, duly qualified as a foreign corporation to transact
27 business in the State of California, and doing business throughout the State of
28 California. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendant Chase Bank is presently and/or has engaged in business in the County of
2 Los Angeles, State of California.

3 5. At all times relevant herein, Defendant Chase Bank and Circuit City
4 Stores Inc. (herein Circuit City) offered a credit card called the "Circuit City Rewards
5 Card". This credit card conferred certain benefits to consumers who utilized the
6 credit card to make their purchases such as earning reward points redeemable at
7 Circuit City stores. Another benefit of the Circuit City Rewards Card was access to
8 Defendants' advertised promotions of "no interest, no payment" or "no interest, with
9 minimum payments" for a specified period of time on certain types of Circuit City
10 purchases. ("Promotional Purchases")

11 6. Plaintiff is informed and believes, and based thereon alleges that at all
12 times herein mentioned, Defendant Chase Bank and DOES 1 through 50, inclusive
13 (hereinafter jointly referred to as "Defendants"), are each responsible in some manner
14 for the transactions, events and occurrences herein alleged and that damages herein
15 alleged were proximately caused thereby. Plaintiff is informed and believes, and
16 based thereon alleges that each of the Doe Defendants was intentionally, negligently,
17 or in some other manner the cause, or contributing cause of, or otherwise responsible
18 for the events and happenings alleged in this complaint and for Plaintiff's injuries
19 and damages and those of the Class. Plaintiff will seek leave to amend this complaint
20 to allege the true names and capacities of each such Doe Defendant, together with
21 such additional allegations as may be appropriate, when their names, capacities, and
22 the nature of their involvement have been ascertained.

23 7. Plaintiff is informed and believes and thereon alleges that at all times
24 herein mentioned, Defendants, and each of them, were the agents, joint venturers,
25 trustees, servants, partners, alter-egos, parent corporations, contractors, and/or
26 employees of each of the remaining Defendants, and that the acts and/or omissions
27 herein alleged were done by them acting individually, through such capacity or
28 through the scope of their authority, and that such conduct was thereafter ratified by

1 the remaining Defendants.

2 8. At all relevant times, Defendants, and each of them, solicited business
3 from residents and other individuals within the State of California, conducted
4 business with consumers in the State of California, conducted business with Plaintiff
5 and others similarly situated with him herein, and solicited business from Plaintiff
6 and others similarly situated with Plaintiff, said business being the subject matter of
7 this complaint.

CLASS ACTION ALLEGATIONS

9 9. Plaintiff brings this class action, on behalf of himself and all others
10 similarly situated in California during all or part of the class period, as more fully
11 explained below. The questions of law or fact common to the class predominate over
12 questions affecting the individual members and, on balance, a class action is superior
13 to other methods available for adjudicating the controversy.

14 10. The proposed class Plaintiff seeks to represent is presently defined as
15 follows:

16 All persons who, in the past four years, used their Chase-Circuit City Rewards
17 Card to

18 (a) make a Non-Promotional and a Promotional Purchase in California;
19 (b) had made the minimum (or greater) payment for their non-promotional
20 purchase(s) on their prior statement closing balance (“Payment”); and
21 (c) were assessed a finance charge on their prior balance without Chase having
22 applied that Payment to their prior balance because Chase applied the payment to the
23 Promotional Purchase rather than to the prior balance.

24 11. There is a well-defined community of interest in the litigation and the
25 proposed class is easily ascertainable.

26 12. Numerosity: The Plaintiff Class is potentially so numerous that the
27 individual joinder of all members is impracticable under the circumstances of the
28 case. While the exact number of class members is unknown to Plaintiff at this time,

1 Plaintiff is informed and believes and thereon alleges that Chase's Circuit City
2 Reward Card Promotional Purchase program was a widespread program marketed
3 and promised to numerous individuals within the customer base of Defendants.

4 13. Common Questions Predominate: Common questions of law and fact
5 exist as to all class members, and predominate over any questions that affect only
6 individual members of the class. The common questions of law and fact include, but
7 are not limited to:

8 (a) Whether Defendants have engaged in practices proscribed by the
9 Consumer Legal Remedies Act, *Civil Code* section 1770, subsection (a)(9), by
10 “advertising goods or services with intent not to sell them as advertised”;

11 (b) Whether Defendants have engaged in practices proscribed by the
12 Consumer Legal Remedies Act, *Civil Code* section 1770, subsection (a)(14),
13 by “representing that a transaction confers or involves rights, remedies or
14 obligations which it does not have or involve, or which are prohibited by law”;

15 (c) Whether Defendants have engaged in practices proscribed by the
16 Consumer Legal Remedies Act, *Civil Code* section 1770, subsection (a)(19),
17 by “inserting an unconscionable provision in the contract”;

18 (d) Whether Defendants have violated the Consumer Legal Remedies
19 Act, *Civil Code* section 1750 et seq., by engaging in other and/or additional
20 practices proscribed therein;

21 (e) Whether Defendants’ conduct is “unlawful,” “unfair” or
22 “fraudulent” within the meaning of California’s Unfair Business Practices Act,
23 *Business and Professions Code* section 17200, et seq.

24 (f) Whether in their uniform, written credit applications and
25 marketing materials, Defendants have failed to disclose material terms of
26 Defendants’ Promotional Purchase offer;

27 (g) Whether Defendants made uniform, material false representations
28 to the effect that consumers would not be charged interest on Promotional

1 Purchases.

2 14. Typicality: Plaintiff's claims are typical of the claims of the members of
3 the Plaintiff Class. Due to Defendants' common course of conduct, Plaintiff and all
4 members of the Plaintiff Class have been unwittingly forced to pay off the
5 Promotional Purchases prior to the expiration of the advertised grace period for such
6 payments and have been assessed a finance charge or charges in connection with a
7 purchase advertised as "interest and payment free" if made with their Circuit City
8 Rewards Card.

9 15. Adequacy: Plaintiff will fairly and adequately protect the interests of the
10 members of Plaintiff Class. Plaintiff resides in California and has been charged
11 finance fees in connection with one or more Promotional Purchases. Plaintiff has
12 retained counsel who have substantial experience in complex civil litigation and class
13 actions.

14 16. Superiority: The class action is superior to other available means for the
15 fair and efficient adjudication of the claims of Plaintiff. The damages suffered by
16 each individual Class Member may be limited. Damages of such magnitude are small
17 given the burden and expense of individual prosecution of the complex and extensive
18 litigation necessitated by Defendants' conduct. Further, it would be virtually
19 impossible for the members of the Class individually to redress effectively the
20 wrongs done to them. Even if the Class Members themselves could afford such
21 individual litigation, the court system could not. Individualized litigation presents a
22 potential for inconsistent or contradictory judgments. Individualized litigation
23 increases the delay and expense to all parties and the court system presented by the
24 complex legal and factual issues of the case. By contrast, the class action device
25 presents far fewer management difficulties, and provides the benefits of single
26 adjudication, economy of scale, and comprehensive supervision by a single court.
27 Certification is also appropriate given the anticipated need to create a fluid recovery
28 fund.

1 17. Plaintiff is unaware of any particular difficulties that are likely to be
2 encountered in the management of this action that would preclude its maintenance as
3 a class action.

4 **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

5 18. Defendants solicited Plaintiff and others similarly situated to make
6 purchases at Circuit City using Defendants' Circuit City Rewards Card and in
7 exchange for using its services, Plaintiff and others similarly situated were eligible to
8 receive an interest and payment free period in which to pay off the balance on certain
9 purchases described herein as "Promotional Purchases."

10 19. From time to time, Defendants advertise the ability to make Promotional
11 Purchases. These advertisements offer "no interest, no payments" or "no interest with
12 minimum payments" for a variable period based on the amount of the purchase. For
13 example, a Circuit City Rewards Card promotional item offered to consumers in
14 2006, states in large writing: "No interest! No payments! For six months when you
15 spend \$499 or more. For 90 days when you spend \$299 or more." "It is easy to take
16 advantage of this offer! When you make a purchase with your Circuit City credit
17 card, present this certificate to the store associate to scan." (A true and correct copy
18 of this Circuit City Rewards Card promotional material is attached hereto as Exhibit
19 A).

20 20. Plaintiff is informed and believes and thereon alleges that this
21 promotional material as well as variations of this promotional material, advertising
22 "no interest, no payment" for a specified period of time, was provided or made
23 available, from time to time, to each of the Class Members.

24 21. On March 3, 2006, Plaintiff purchased a television set from Circuit City,
25 charging \$2,000 to his Chase Circuit City Rewards Card. Although Plaintiff did not
26 request that this item be treated as a Promotional Purchase, Defendants nevertheless
27 automatically treated this item as a Promotional Purchase, with the term of no interest
28 with minimal payment until January 2008.

1 22. Prior to the purchase of the subject television, Defendant Chase Bank
2 billed Plaintiff for purchases made between January 14, 2006, and February 13, 2006
3 ("February Statement"), on his Circuit City Rewards Card. Payment was due by
4 March 10, 2006, and if Payment was posted by March 10, 2006, no finance charge
5 should be applied because the balance would have been paid in full. Alternatively, if
6 partial Payment was made either of the minimum amount or a greater amount, then a
7 finance charge should be applied only against the remaining balance after subtracting
8 the Payment made. Plaintiff returned two items and made two on-line payments
9 consisting of the total amount owing on March 4, 2006, and March 6, 2006, thereby
10 paying the February Statement balance in full and on time.

11 23. Based on the language appearing in each of his monthly statements,
12 Plaintiff was informed and believed that he would not be assessed a finance charge if
13 his monthly billings were paid in full, or that any finance charge would be based only
14 on the remaining balance after any partial Payment had been subtracted from the
15 outstanding balance. Each billing statement received by Plaintiff states: "[W]e do not
16 charge periodic finance charges on new purchases billed during the billing cycle if
17 we receive payment of your New Balance by the date and time your payment is due
18 as shown on your billing statement and we received payment of your New Balance
19 on your previous billing statement by the date and time your payment was due as
20 shown on that billing statement." (A true and correct copy of the February Statement
21 is attached hereto as Exhibit B).

22 24. Sometime after March 13, 2006, Plaintiff received his monthly statement
23 from Defendant Chase Bank for purchases made between February 14, 2006, and
24 March 13, 2006 ("March Statement"). Although plaintiff had paid the February
25 Statement balance in full and in a timely manner, Defendant Chase Bank assessed a
26 \$77.25 finance charge which appeared on the March Statement. (A true and correct
27 copy of the March Statement is attached hereto as Exhibit C).

28 25. Plaintiff is informed and believes, and based thereon alleges that he was

1 assessed the \$77.25 finance charge because his entire February Statement Payment
2 was applied against the \$2,000 Promotional Purchase, payment for which was not
3 due, instead of to the February Statement balance, thereby leaving a balance due
4 against which finance charges were charged. The \$2,000 charge for the television
5 was made subsequent to the issuance of the February Statement, and no Payments of
6 any kind were due and owing for the Promotional Purchase until January 2008.
7 Nevertheless, Defendant Chase Bank allocated the entire \$1,736.91 that Plaintiff paid
8 on his February Statement to the March 3, 2006, Promotional Purchase, even though,
9 as advertised, no amounts were due and owing on that item.

10 26. Chase assessed similar finance charges against Plaintiff on at least two
11 (2) other prior occasions involving the same type of Promotional Purchase, where
12 payments were not due for a specified period of time, but Chase nevertheless
13 allocated all of Plaintiff's payments to the Promotional Purchase. Plaintiff is
14 informed and believes, and based thereon alleges that thousands of other similarly
15 situated Class Members made similar types of Promotional Purchases at Circuit City
16 using Chase's Circuit City Rewards Card, which Chase treated as Promotional
17 Purchases subject to terms of "no interest, no payment" or "no interest with minimal
18 payment" for a specified period of time, but were thereafter charged a finance charge
19 in a manner similar, or identical to that of Plaintiff.

20 27. Chase fails to disclose that all payments made by the consumer on his or
21 her regular monthly statement are given priority of payment to the promotional item,
22 even if not yet billed and even if not due for many months.

23 28. The promotional offer conveys that the consumer will receive a benefit
24 of a grace period of anywhere from a few months to two (2) years or more. Plaintiff
25 is informed and believes, and based thereon alleges, however, that the offer is a scam
26 used to induce consumers into believing that they will have an extended time period
27 in which to pay off their Promotional Purchases, when in fact, the consumer has less
28 time to pay off the Promotional Purchases due to Chase's practice of allocating

1 consumers' Payments as described herein.

2 29. Plaintiff is informed and believes, and based thereon alleges that
3 Defendant Chase Bank knows of the terms and conditions of such Promotional
4 Purchases, and that Chase's practice of prioritizing the allocation of credit card
5 payments to purchases not yet due and owing is deceptive, misleading, fraudulent,
6 unfair and in violation of California law. Plaintiff further is informed and believes,
7 and based thereon alleges that Defendant Chase Bank's practice of prioritizing the
8 allocation of credit card payments to purchases advertised as "interest and payment
9 free" is especially egregious and violative of California law as this practice directly
10 contradicts the concept of "interest and payment free."

11 30. Plaintiff, on behalf of himself and all others similarly situated, seeks
12 damages and equitable relief, including restitution, for violations of the California
13 Consumers Legal Remedies Act, the *California Business and Professions Code*
14 (Unfair Business Practices), breach of contract and of the covenant of good faith and
15 fair dealing. On behalf of himself and the proposed Class Members, and to the
16 extent appropriate, on behalf of the general public of California, Plaintiff seeks,
17 among other things, injunctive relief, equitable relief, including restitution and
18 disgorgement, and actual and punitive damages, and attorney's fees.

19 31. Following the filing of this case, Chase moved to compel arbitration and
20 to enforce a class action waiver on the basis of an arbitration clause contained in its
21 cardmember agreement. An arbitration clause containing a class action waiver was
22 not part of Plaintiff's original cardmember agreement, but subsequent to the issuance
23 of Plaintiff's credit card, Chase introduced a new arbitration clause containing a class
24 action waiver in a "bill stuffer" that was sent to its Cardmembers as part of their
25 monthly billing. Chase sought to change the arbitration clause pursuant to the
26 "change of terms" clause in the Cardmember agreement, which Chase contends
27 gives it the right to unilaterally change any provision of the cardmember agreement at
28 any time, without any consideration provided to the cardholder.

1 32. On March 26, 2007, the trial court denied Chase's motion, finding
2 Chase's arbitration clause to be both procedurally and substantively unconscionable
3 under California law. Plaintiff's counsel had to expend time and effort in opposing
4 Chase's motion, and Plaintiffs incurred attorneys fees in opposing the motion.

5 33. Chase then appealed the trial court's order, and the matter was tied up at
6 the 9th Circuit Court of Appeal for about 1 ½ years, until the Court of Appeal
7 rendered its decision on November 3, 2008, affirming the trial court's determination
8 that Chase's arbitration clause and class action waiver are unconscionable and
9 unenforceable.

10 34. The Plaintiff Class has been damaged by Chase's assertion of both an
11 unconscionable arbitration clause as well as unconscionable "Change of Terms"
12 provision, in that they expended significant attorneys fees at both the trial and
13 appellate level to defeat Chase, and has been further damaged because the case has
14 been stayed for almost 2 years while the matter was pending at the 9th Circuit.
15 During that time, Chase continued its illegal practices, and continued to collect
16 finance charges and penalties from class members to which Chase is not entitled.
17 Accordingly, pursuant to the recent California Supreme Court decision of *Meyer v.*
18 *Sprint Spectrum* (2009) WL197560, Plaintiff has standing under the Consumer Legal
19 Remedies Act to seek removal of Chase's unconscionable contract provisions.

FIRST CAUSE OF ACTION

(Violation of the Consumers Legal Remedies Act)

(Against All Defendants)

23 35. Plaintiff incorporates by reference paragraphs 1 – 34 above as though
24 fully set forth herein.

25 36. Defendant is a "person" and it provides "goods" and "services" within
26 the meaning of the *Civil Code* sections 1761(c) and 1770.

27 37. Purchasers of Circuit City Promotional Purchases with the Chase Circuit
28 City Rewards Card, including Plaintiff and Class Members, are “consumers” within

1 the meaning of the *Civil Code* section 1761(d) and 1770. Plaintiff's and each Class
2 Member's Promotional Purchase with the Chase Circuit City Rewards Card
3 constitutes a "transaction" within the meaning of *Civil Code* sections 1761(e) and
4 1770.

5 38. As set forth herein, Defendants' acts, practices, representations,
6 omissions, cardmember agreement and course of conduct violates section 1770
7 (a)(9), (14), and (19) of the Consumers Legal Remedies Act in that Defendants: (a)
8 advertised goods or services with the intent not to sell them as advertised; (b)
9 represented that the transaction conferred or involved rights, remedies or obligations
10 that it did not have or involve; and (c) inserted unconscionable provisions in the
11 Cardmember agreement.

12 39. The original complaint constituted notice to Defendants pursuant to
13 *California Civil Code* section 1782 of the unlawful, unfair and fraudulent business
14 practices as complained herein and formally demanded that Defendants: (1) cease
15 and desist all advertising, promotional and sales activities and practices described
16 herein; (2) cease the promotion of its "interest and payment free" credit card through
17 the use of deceptive and misleading advertising devices as described herein; (3) cease
18 the practice of prioritizing the application of consumers' credit card payments to
19 Promotional Purchases; (4) disclose to all consumers' Defendants' deceptive and
20 illegal practices; and (5) remove the unconscionable provisions from its cardmember
21 agreements.

22 40. Defendants failed to comply with the demands as stated above, and
23 therefore this First Amended Complaint seeks an order, pursuant to *California Code*
24 *of Civil Procedure* section 1780 et seq.: (1) directing Defendants to cease and desist
25 all advertising, promotional and sales activities and practices described herein; (2)
26 enjoining Defendants from the promotion of its "interest and payment free" credit
27 card through the use of deceptive and misleading advertising devices as described
28 herein; (3) directing Defendants to disgorge, for the benefit of Class Members, its

1 profits and compensation emanating from its “interest and payment free” scheme,
2 and/or make full restitution to Plaintiff and Class Members; and (4) enjoining
3 Defendant Chase Bank from prioritizing the application of consumers’ credit card
4 payments to Promotional Purchases; and (5) enjoining Defendants from any further
5 use of an arbitration clause with a class action waiver, or a “change of terms”
6 provision within its Cardmember agreements. Moreover, Plaintiffs now also seek all
7 available compensatory and punitive damages, costs of litigation, attorneys’ fees and
8 such other relief as is authorized under applicable provisions of the CLRA.

9 **SECOND CAUSE OF ACTION**

10 (For Violation of the *California Business and Professions Code*
11 *Section 17200 et seq.: Unlawful and Unfair Business Practices*)

12 (Against All Defendants)

13 41. Plaintiff incorporates by reference paragraphs 1 – 40 above as though
14 fully set forth herein. Plaintiff has suffered injury in fact and has suffered financial
15 loss as a result of Defendants’ conduct as alleged in this cause of action.

16 42. Defendants’ acts, conduct and practices as described herein constitute
17 unlawful business acts and practices within the meaning of *California Business and*
18 *Professions Code* sections 17200 et seq.

19 43. Defendants’ acts, conduct and practices were unlawful, in that
20 Defendants violated the Consumers Legal Remedies Act, as alleged herein.

21 44. Defendants’ acts, conduct, practices, and unconscionable cardmember
22 agreement as described herein, constitute unfair, fraudulent, and deceptive business
23 acts and practices within the meaning of *California Business and Professions Code*
24 sections 17200 et seq.

25 45. Defendants’ acts, conduct and practices, as alleged herein, were unfair,
26 in that any utility for Defendants’ conduct is outweighed by the gravity of the
27 consequences to Plaintiff, Class Members, and the general public, and/or Defendants’
28 conduct is immoral, unethical, oppressive, unscrupulous or substantially injurious to

1 Plaintiff, Class Members and the general public.

2 46. Defendants' acts, conduct and practices, as alleged herein, were
3 fraudulent, in that they were likely to and did deceive Plaintiff, Class Members and
4 the general public, and Defendants engaged in such acts, conduct, and practices
5 knowingly.

6 47. Defendants' unfair, fraudulent, and deceptive business acts and practices
7 are described herein and include, but are not limited to, the following:

8 (a) Advertising promotional items as interest and payment free when
9 purchased with a Chase Circuit City Rewards Card when in fact, interest and
10 finance charges were frequently applied;

11 (b) Charging a finance fee despite Payment of the monthly balance in
12 part or in full, without deducting the Payment made before assessing any
13 finance charge;

14 (c) Applying monthly Payments to Promotional Purchases not yet
15 billed or owing instead of to the balance as billed in the monthly statement
16 due; and

17 (d) Inserting an unconscionable arbitration and class action waiver
18 clause and "change of terms" clause in its Cardmember Agreement.

19 48. As a direct and proximate result of Defendants' unfair, unlawful and
20 fraudulent business practices as alleged herein, Defendants were able to: (a) issue
21 more credit cards to Chase customers than they otherwise would have; (b) receive
22 more credit card purchases than they otherwise would have; and/or (c) charge more
23 finance charges than they otherwise would have, and accordingly, Defendants
24 received and are in possession of excessive and unjust revenues and profits.

25 49. Plaintiff, on behalf of himself and all others similarly situated in
26 California, and where appropriate, on behalf of the general public of California, seeks
27 an order including, but not limited to (1) directing Defendants to cease and desist all
28 advertising, promotional and sales activities and practices described herein; (2)

1 enjoining Defendants from the promotion of their “interest and payment free” credit
2 card through the use of deceptive and misleading advertising devices as described
3 herein; (3) directing Defendants to disgorge, for the benefit of Class Members, their
4 profits and compensation emanating from their “interest and payment free” scheme,
5 and/or make full restitution to Plaintiff and Class Members; (4) enjoining Defendant
6 Chase Bank from prioritizing the application of consumers’ credit card payments to
7 Promotional Purchases; and (5) removing the unconscionable arbitration and class
8 action waiver and change of terms provisions from its cardmember agreements.
9 Plaintiff also seeks any other relief the Court deems acceptable, in accordance with
10 section 17203 of the Business and Professions Code. Plaintiff also seeks costs of
11 litigation, attorneys’ fees pursuant to *California Code of Civil Procedure* §1021.5,
12 and such other relief as the Court deems proper.

THIRD CAUSE OF ACTION

(Breach of Contract)

(Against Defendant Chase Bank and Does 1 - 50)

16 50. Plaintiff incorporates by reference paragraphs 1 – 49 above as though
17 fully set forth herein.

18 51. Defendant Chase Bank offered Plaintiff and Class Members a no
19 interest, no payment grace period on Promotional Purchases made using their Chase
20 Circuit City Rewards Card.

52. Plaintiff and Class Members made Promotional Purchases as offered by
Defendant Chase Bank.

23 53. Defendant Chase Bank breached these contracts by prioritizing the
24 allocation of credit card Payments to purchases offered and accepted as interest and
25 payment free ahead of non-promotional items appearing on the monthly statement.

26 Defendant Chase Bank further breached these contracts by charging an interest fee on
27 balances that remained due to this allocation of Payments.

28 | 54. By reason of Defendants' breach of Plaintiff's and other Class Members'

1 respective contracts, Plaintiffs and other Class Members have been damaged in the
2 manner set forth herein, in an amount to be determined at trial.

3 **FOURTH CAUSE OF ACTION**

4 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

5 (Against Defendant Chase Bank and Does 1 – 50)

6 55. Plaintiff incorporates by reference paragraphs 1 – 54 above as though
7 fully set forth herein.

8 56. Every contract imposes upon each party a duty of good faith and fair
9 dealing in its performance. The Promotional Purchases made by Plaintiff and Class
10 Members with their Circuit City Rewards Card contained an implied covenant of
11 good faith and fair dealing. The covenant requires that neither party to the
12 Promotional Purchase agreement do anything to infringe upon the other party's rights
13 to the benefits of the agreement.

14 57. Defendant Chase Bank's conduct, as set forth herein, has breached each
15 of the implied covenants of good faith and fair dealing.

16 58. For example, Defendant Chase Bank has materially breached the implied
17 covenant of good faith and fair dealing by:

18 (a) Promising purchasers of Circuit City Promotional Purchases they
19 would receive a payment free period in which to payoff their purchase, when,
20 in fact, Defendant Chase Bank prioritized the allocation of Payments to
21 Promotional Purchases;

22 (b) Promising purchasers of Circuit City Promotional Purchases they
23 would receive an interest free period in which to payoff their purchase, when,
24 in fact, Defendant Chase Bank charged interest fees in connection with
25 Promotional Purchases.

26 59. As a direct result of material breaches of the implied covenant of good
27 faith and fair dealing by Defendants, as set forth herein, Plaintiffs have been damaged
28 as may be shown according to proof at the time of trial.

1 **WHEREFORE**, Plaintiff, on Plaintiff's own behalf and on behalf of the Class
2 Members, prays for judgment as follows:

3 1. For an order certifying the Plaintiff Class and appointing Plaintiff and
4 his counsel to represent the Class;

5 2. For an order awarding compensatory damages in an amount which may
6 be proven at trial, together with interest thereon;

7 3. For an order awarding restitution and/or disgorgement and other
8 equitable relief as the Court deems proper;

9 4. For an order awarding exemplary damages in an amount to deter and
10 punish;

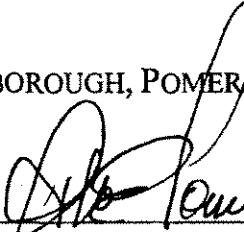
11 5. For an order awarding pre-judgment and post-judgment interest, as well
12 as their reasonable attorneys' and experts' witness fees and other costs;

13 6. For an order enjoining Defendants from continuing to engage in unfair
14 business practices and false advertising; and,

15 7. For an order awarding such other and further relief as this Court may
16 deem just and proper.

17
18 DATED: March 11, 2009

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

19
20 By: 

DREW E. POMERANCE

BURTON E. FALK

21
22 Attorneys for Plaintiff GARY DAVIS,
23 individually and on behalf of himself, and as
24 Private Attorney General and on behalf of all
25 others similarly situated

26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all matters for which a jury trial is guaranteed.

DATED: March 11, 2009 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

By: Drew E. Pomerance
DREW E. POMERANCE

DREW E. POMERANCE

BURTON E. FALK

Attorneys for Plaintiff

individually and on behalf of himself, and as Private Attorney General and on behalf of all others similarly situated

EXHIBIT

A

circuit city
Rewards

Get

5%

Rewards

circuit city

Rewards

55 76 1234 5678
09/07 08/07 2009
CIRCUIT CITY REWARDS

**NO
ANNUAL
FEE**

Apply now!

Just what I needed!

APPLICATION

Please process immediately

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST-CLASS MAIL

PERMIT NO 218

KENNESAW, GA

POSTAGE WILL BE PAID BY ADDRESSEE

CHASE CARD SERVICES
PO BOX 100017
KENNESAW GA 30144-9909



circuit city
Rewards



55 76 1234 5678
09/07 08/07 2009
CIRCUIT CITY REWARDS

Shop at Circuit City
and circuitcity.com

5%
Rewards at
Circuit
City

Look inside to find out more or
ask your store associate to sign
you up today

circuit city
Rewards

TERMS & CONDITIONS

Authorization: When you sign and return the form for this credit card offer from Chase Bank USA, N.A. ("Chase" "we" or "us"), you agree to the following:

1. You authorize us to obtain credit bureau reports in connection with your account. If an account is opened, we may obtain credit bureau reports in connection with admissions of credit or the review or collection of your account. If you ask, we will tell you the name and address of each credit bureau from which we obtain a report about you.
2. If an account is opened, you will receive a Cardmember Agreement and Terms and Conditions of the Circuit City Rewards Program with your card(s). By using the account or any card, or authorizing their use, you agree to the terms of the Cardmember Agreement and Terms and Conditions of the Circuit City Rewards Program.
3. You authorize us to allocate your payments and credits in a way that is most favorable to or convenient for us. For example, you authorize us to apply your payments and credits to balances with lower APRs (such as promotional APRs) before balances with higher APRs.

4. Checks and deposits are subject to arbitration.
5. As described in the Cardmember Agreement, we reserve the right to change the terms of your account (including the APRs) at any time, for any reason, in addition to APR increases that may occur for other reasons, including the terms of your account.

We will neither your credit history nor income to determine if you qualify for an account and, if so, your APRs and credit line. Based on this review, you may not receive a card or you may receive a card with a credit line as low as \$500.

The minimum gross annual income required for an account is \$14,400. You must be at least 18 years old to qualify [19 in AL and MS].

We reserve the right to change the benefit features associated with your card at any time.

Card Protection: The Ohio laws against discrimination require that all creditors make credit equally available to all consumers, and that credit reporting agencies maintain separate histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with the law.

Notice to Material Witness/Holder Residential: No provision of any general property agreement, individual contract or court decree adversely affects our rights, unless you give us a copy of such agreement, statement or court order before we grant you credit, or we have actual knowledge of the adverse condition. All obligations on this account will be incurred in the name of your corporation or family. You understand that we may be required to give notice of this account to your spouse. Material Witness/Holder residential witness shall file a complaint with your state and local security authority as well as the name and address of their spouse to Consumer Credit Services at P.O. Box 34000, Kenner, LA 70050-3400.

Affiliate Information Sharing: Chase Bank USA, N.A. is part of JPMorgan Chase & Co. We and our Affiliates Chase & Co. maintains many other businesses that may receive information in order to offer products and services of interest to you. If you would prefer that we do not share information from your application, credit history or bank profile, please call us at 1-800-777-7122. For more information about our information sharing policies, visit us on the web at <http://www.chase.com/privacy>.

Objection of Any Information Requested: On the form may be requests for detailed information of an account. This offer is available only to applicants who reside in the United States of America. The credit disclosures given on this offer were printed on the point date indicated and were accurate as of that date. The credit information is subject to change after the printing date. You should contact us for any change after the printing date by writing to Consumer Service, P.O. Box 10045, Kenner, LA 70050-2645. We comply with Section 326 of the USA PATRIOT Act. This law mandates that we verify certain information about you while processing your account application.

RATE, FEE AND OTHER COST INFORMATION	
Circuit City Rewards Visa®	Circuit City Rewards Proprietary Card
Annual Percentage Rate (APR) for purchases	15.24% variable or 17.24% variable, depending on our review of your application and credit history.
Other APRs	<p>Balance Transfer APR: 15.24% variable or 17.24% variable, depending on our review of your application and credit history.</p> <p>Cash Advance APR: 21.45% variable</p> <p>Default rate: 24.9% fixed. See explanation below.^a</p> <p>Deferred/Accumulated Finance Charge Rate: 22.24% variable or 24.00% fixed, depending on our review of your application and credit history.</p>
Variable rate information	<p>The following APRs may vary monthly based on the Prime Rate.^b</p> <p>Purchase APR equals the Prime Rate plus 15.99%, but not less than 20.45% or more than 24.00%. The variable Deferred/Accumulated Finance Charge APR equals the Prime Rate plus 16.49%, but not less than 20.49%.</p> <p>Cast Advance APR equals the Prime Rate plus 16.49%, but not less than 19.99%.</p> <p>Deferred/Accumulated Finance Charge APR equals the Prime Rate plus 16.49%, but not less than 20.49%.</p>
Grace Period for repayment of new purchases	At least 20 days, but none for balance transfers, convenience checks, or cash advances, if applicable.
Method of computing the balance for purchases	Two-cycle average daily balance method (including new purchases).
Late fee	None
Minimum finance charge	\$1.00
Transaction fee for noninterest checks	All cash advances: 3% of the amount of the advance, but not less than \$1.00.
Transaction fees for cash advances	All cash advances: 3% of the amount of the advance, but not less than \$1.00 or more than \$75.00.
Late Payment fee: Circuit City Rewards Visa®	\$16.00 on balances up to but not including \$250, \$35.00 on balances of \$250 and over. However, if you already have made one or more late payments in the prior 12 month period, \$35.00 regardless of the amount of your balance. Circuit City Rewards Card: \$5.00
Over-Bal-Cash-Ext-Limit fee:	\$25.00 for Circuit City Rewards Visa, None for Circuit City Rewards Card.
International Transaction fee:	3% of the converted transaction amount. None for Circuit City Rewards Card.

You understand that the terms of your account, including the APRs, are subject to change. This means that the APRs for this offer are not guaranteed. APRs may change to higher APRs, fixed APRs may change to variable APRs, or variable APRs may change to fixed APRs. We reserve the right to change the terms (including the APRs) at any time for any reason, in addition to APR increases that may occur for failure to comply with the terms of your account. Any changes will be in accordance with your Cardmember Agreement.

Our APRs may increase if you default under any Cardmember Agreement you have with us for any of the following reasons: we do not receive, or any payment that is owed on this Account or any other account or loan with us, at least the minimum payment due by the due date and time due; you exceed your credit line on this Account. If applicable, you fail to make payment to another creditor when due; you make a payment to us that is not honored by your bank; or, if at any time after your Account is closed, we demand immediate payment of your outstanding balance and we do not receive payment within the time we specify.

We may consider the following factors to determine the default rate: the length of time your Account has been open; the existence, seriousness and timing of defaults; other indications of your Account usage and performance; and information about your other relationships with us, and/or related companies or from consumer reporting agencies.

The Credit City Rewards VISA credit card account with Chase Bank USA ("Chase" or the "Bank"). The applicant, if married, may apply for a separate account. After credit approval such applicant shall have the right to use the credit card account up to the credit limit of the account. Each applicant may be liable for amounts extended under

CREDIT CARD APPLICATION

Rewards Visa®
and get 5% rewards

Please detach along the perforated line. Morten here, fold, seal and mail.

You are applying for a Circuit City Rewards Visa account. If you do not qualify for this account, Chase may consider you for a Circuit City Rewards Card account.

¹Reward points are not earned on balance transfers, cash advances, convenience checks (including those issued for purchases at Circuit City Stores and circuitcity.com), sale tax, Circuit City gift cards, money orders, finance charges, unadjusted charges, or fees of any kind, including fees for products that protect or insure the balance of the cardholder's account. Points are also not earned when the cardholder elects to take advantage of some special banking offers that provide rates favorable to cardholders than those disclosed in the Cardholder Agreement. Points will expire on a first-earned, first-expired basis. Points will expire 30 months from the month in which the points were earned. Your rewards disclosure will be included with your Cardholder Agreement.

²U.S.-issued cards only. Visa's Zero Liability policy does not apply to ATM transactions or to PIN transactions not processed by Visa.

Total Protection™ Debt Cancellation Plan Summary*

Total Protection™ is an optional account feature that can help protect your balance during a covered involuntary Unemployment, Disability or employee-approved Leave of Absence by providing monthly cancellation of 1% of the protected account balance of \$20, whichever is greater, not to exceed \$500 per month, up to 6 months for Leave of Absence and 12 months for Involuntary Unemployment or Disability. In addition, should you or the joint account holder die, or if you become totally and permanently disabled, the balance on the account may be canceled in full up to a maximum of \$10,000. Once Total Protection is added to your account, you will receive a Welcome package within 7-10 days.

Important Total Protection™ Debt Cancellation Information

Your purchase of Total Protection™ is optional. Whether or not you purchase Total Protection will not affect your application for credit or the terms of any existing credit agreement you have with Chase Bank USA, N.A. The monthly fee for Total Protection is \$3.89 per \$100 of your account balance based on your Average Daily Balance on the last day of your billing cycle. You have the right to cancel Total Protection at any time. The bank will automatically cancel Total Protection if your account becomes more than 10 days delinquent. The bank may cancel Total Protection upon 30 days written notice to you. There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under Total Protection. You will find a complete explanation of the eligibility requirements, conditions, and exclusions in sections 4, 5, 6, 7, 8, 11, and 13 of the Total Protection Program Terms and Conditions ("Terms and Conditions") that will be mailed to you upon receipt of your application.

The above is merely a summary of the Total Protection Terms and Conditions that you will receive in your enrollment package. In the event of a conflict between this summary and the Total Protection Terms and Conditions, the Terms and Conditions shall control.

Apply Now!

- See a store associate
- Mail in your application
- Apply online at circuitcity.com

Your Circuit City Rewards Visa Comes Loaded With Extra Value You Choose What's Best

If a special financing offer is available, you can select the financing offer instead of the rewards points. You make the choice!

Auto Rental Insurance

Save up to \$13 a day on additional insurance costs with the Visa Auto Rental Collision Damage Waiver.

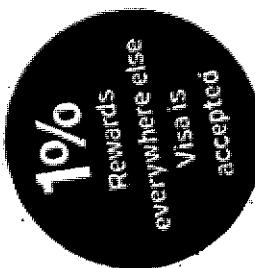
Just decline the collision damage waiver offered by the rental company.

Worldwide Acceptance and Cash Access

Your Circuit City Rewards Visa[®] is accepted at any location worldwide that accept Visa credit cards. Plus, if you ever need quick cash, just use your card in the Visa Global ATM Network.

Zero Liability²

You're protected from unauthorized use of your card or account information—so you pay nothing for unauthorized transactions.



the
REWARDS
card



EXHIBIT

B

Case 2:06-cv-04804-DDP-PJW Document 88 Filed 03/12/2009

Page 26 of 31

ng of Payments: For payments by regular U.S. mail, send at least your minimum payment to our post office box designated; for payments shown on this statement. Your payments by us must comply with the instructions on this statement, and must be made by check or money payable in U.S. Dollars, and drawn on or payable through a U.S. financial institution or the branch of a foreign financial institution. Do not send cash. Write your account number on the back of a payment by mail or on the payment coupon in the envelope provided with our address visible through the envelope window; the envelope cannot contain more than one payment or coupon; and there can be no staples, paper clips, tape or evidence included with your payment. If your payment is in accordance with our payment instructions and is made available to us on any day except December 25 by 1:00 p.m. local time at our post office box designated for payments on this statement, we will credit the payment to your account as of that day. If your payment is in accordance with our payment instructions, but is available to us after 1:00 p.m. local time at our post office box designated for payments on this statement, we will credit it to your account as of the next day. If you do not follow our payment instructions or if your payment is not sent by regular U.S. mail to our post office box designated for payments, crediting of your payment may be delayed for up to 5 days. Payments electronically through our automated telephone service, Customer Service advisors, or our teletext will be subject to any processing times disclosed for those payments.

nt Information Reported to Credit Bureaus: We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may appear in your credit report. If you think we have reported inaccurate information to a credit bureau, you may write to us at the Cardmember Service address listed on your billing statement.

tional Payments: Any payment check or other form of payment that you send us for less than the full balance due that is marked "paid in full" or contains a similar notation, or that you otherwise tender in full satisfaction of a disputed amount, must be sent to Cardmember Services, P.O. Box 100045, Kennesaw, GA 30156. We reserve all our rights regarding these payments (e.g., if determined there is no valid dispute or if any such check is received at any other address, we accept the check and you will still owe any remaining balance). We may refuse to accept such payment by returning it to you, not cashing it or destroying it. All other payments that are sent should be sent to the appropriate payment address.

sation of Finance Charges: The balance calculation method for purchases is the Two-Layer Daily Balance (including new purchases). If your annual percentage rate (APR) is 14%, the Index and margin used to determine that rate and its corresponding APR are set in your Cardmember Agreement, as amended. Finance charges for each billing cycle are computed for transactions in the following manner:

Compute a portion of your finance charge by multiplying a daily periodic rate by a daily balance for each day in the billing cycle for each balance type. We calculate periodic finance charges separately for each balance associated with a different balance type. These calculations for each balance type may include different transactions with the same daily periodic rates. The balance types are the average daily balance of:

Balance Type A – Purchases (including new Purchases) are your regular purchases to which Interest Free Special Purchase and Special Purchase promotional terms do not apply or are terminated, and also includes all unpaid debt cancellation charges, expedited payment and any other charges except cash advances and finance charges on cash advances.

Balance Type B – Previous Cycle Purchases (including previous cycle new purchases) regular purchases for the previous billing cycle using the same kinds of purchases and charges as are used in computing Balance Type A for the current billing cycle.

Balance Type C – Cash Advances (including new cash advances) are your regular cash advances to which Reduced Rate Cash Advance promotional terms do not apply and finance charges on regular cash advances.

Balance Type D – Interest Free Special Purchases (including new Interest Free Special Purchases) are special promotional purchase balances and **Balance Type E – Interest Free Cash Advances (including new Interest Free Cash Advances)** are special promotional cash advance balances. Finance charges accruing on these balance types are not added to your account balance, but instead they are accumulated from billing cycle to billing cycle and added to your account as Accumulated Finance Charges only if the Interest Free Special Purchase or Interest Free Cash Advance has not been paid in full by the end of the time period in the promotional offer. Accumulated Finance Charges also may be added to your account balance and the interest free promotion will terminate if the default rate takes effect on your account balances because you default under your Agreement. Until accumulated finance charges are posted to your account, we refer to these amounts as "Accumulated Finance Charges." For each billing cycle during which Accumulated Finance Charges and terminated Interest Free Special Purchase or Interest Free Cash Advance are posted to your account, your statement will also disclose the average daily balance of such purchases or advances for that billing cycle.

Balance Type F – Special Purchases (including new Special Purchases) are special promotional purchase balances to which special promotional terms (other than Interest Free Special Purchases described above) apply until the expiration of any time period specified in the promotional offer. A Special Purchase promotion also will terminate if the default rate takes effect on your account balances because you default under your Agreement.

Balance Type G – Reduced Rate Cash Advances (including new Reduced Rate Cash Advances) are special promotional cash advance balances to which a special reduced daily periodic rate applies.

To determine the daily balance for each balance type we (i) take the beginning balance of that type in your account each day (including any unpaid finance charges, fees and charges applicable to that balance type), and (ii) add any new transactions of that type and add any new fees or other charges of the kinds referred to in (i) above, and (iii) subtract the applicable portion of any payments and credits applied to your account as of that day (for Balance Types D, E and F) subtract the unpaid balance of any purchases or cash advances for which the Interest Free Special Purchase feature, Interest Free Cash Advances or Special Purchase feature, as applicable, terminated as of that day).

actions, balance transfer/convenience check fees and cash advance fees are added to a balance as of the date of the transaction or a later date of our choice. Other charges of the kinds referred to in (i) above are added as of the date the charge is posted to your account. Accumulated Finance Charges on any Interest Free Special Purchases are added to Balance Type A, and Accumulated Finance Charges on any Interest Free Cash Advances are

In Case of Errors or Questions About Your Bill: If you think your bill is wrong or if you need more information about a transaction on your bill, write us using a copy of the form below or on a separate sheet at P.O. Box 100045 Kennesaw, GA 30156-9245 as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about. You do not have to pay the amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we are investigating your question, we cannot report you as delinquent on the disputed amount or take any action to collect the amount you question. If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter or call (using the Cardmember Service address or telephone number shown on this statement) must reach us at least three business days before the automatic payment is scheduled to occur.

Special Rule for Credit Card Purchases: If you have a problem with the quality of goods or services that you purchased with a credit card (excluding purchases made with a check), and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

added to Balance Type C, as of the first day of the next billing cycle following the day on which the Interest Free feature expires if the Interest Free Special Purchases or Cash Advances have not been paid in full by that date, or as of the first day of the billing cycle that includes the day on which the Interest Free feature is terminated early because the default rate takes effect on all account balances. This gives us the daily balance for each balance type for each day in the billing cycle for each balance type. We add each day's daily periodic finance charge to the beginning daily balance for the next day.

There is a minimum finance charge of \$1 on purchases (with regard to balance types A and B) and a minimum finance charge of \$1 on cash advances in any billing cycle in which you owe periodic finance charges on these balance types. There is a transaction fee finance charge for each balance transfer, balance transfer/convenience check, or cash advance, in the amounts stated in your Cardmember Agreement, as amended. To get the total periodic finance charge for the billing cycle, we add all of the daily periodic finance charges for each day during that billing cycle for each balance type. Your total finance charge for the billing cycle is the sum of (1) any balance transfer/convenience check fee and cash advance transaction fees, (2) the periodic finance charges computed as described above on cash advance balances in balance types C, E and G, and (3) the periodic finance charges computed as described above on purchase balance types A, B, D, and F, except that the periodic finance charges on balance types D and E are accumulated from billing cycle to billing cycle and are only added to your account as Accumulated Finance Charges under the circumstances mentioned above.

For each balance type we calculate an average daily balance (including new transactions) for the billing cycle by adding all your daily balances and dividing that amount by the number of days in the billing cycle. If you multiply the average daily balance for a balance type by that balance type's daily periodic rate, and multiply the result by the number of days in the billing cycle, the total will equal the periodic finance charges for that balance type attributable to that billing cycle, except for minor variations due to rounding.

Grace Period: We accrue periodic finance charges on a transaction, fee, or finance charge from the date it is added to your daily balance until payment in full is received on your account. However, we do not charge periodic finance charges on new purchases billed during a billing cycle if we receive payment of your New Balance by the date and time your payment is due as shown on your billing statement and we received payment of your New Balance on your previous billing statement by the date and time your payment was due as shown on that billing statement. This exception or "grace period" of at least 20 days only applies to purchases, except it does not apply to Balance Type F – Special Purchases, balance transfers, balance transfer/convenience check or cash advance checks, including cash advance checks: A finance charge is computed on Balance Type B – Previous Cycle Purchases only if the New Balance shown on your billing statement for the previous billing cycle was not paid in full by the date and time shown on your previous billing statement and the Previous Balance shown on your billing statement for the previous billing cycle was zero, was a credit balance, or was paid in full during the previous billing cycle.

Annual Renewal Notice: If your account has an annual fee, it will be billed each year or in monthly installments, whether or not you use your account, and you agree to pay it when billed. The annual fee is non-refundable unless you notify us that you wish to close your account within 30 days of the date we mail your statement on which the annual fee is charged and at the same time, you pay your outstanding balance in full. Your payment of the annual fee does not affect our rights to close your account and to limit your right to make transactions on your account. If your account is closed by us or you, we will continue to charge the annual fee until you pay your outstanding balance in full and terminate your account relationship.

EXHIBIT

C

41041400149340390000119000004497579

CHASE CARDMEMBER SERVICE
PO BOX 100044
KENNESAW, GA 30156-9244

ACCOUNT # 4104140014934039
NEW BALANCE \$4,497.57
PAYMENT DUE DATE 04/07/06
MINIMUM PAYMENT DUE \$119.00

CHASE CARDMEMBER SERVICE
PO BOX 94010
PALATINE, IL 60094-4010

MAIL
CHECK
TO:

M0114178

MAKE CHECKS PAYABLE TO CHASE



AMOUNT ENCLOSED

GARY J DAVIS
3126 ROBERTS AVE
CULVER CITY CA 90232-7415

PLEASE INDICATE ANY CHANGE TO ADDRESS OR TELEPHONE BELOW OR VISIT WWW.CIRCUITCITYREWARDS.COM

Street Address _____ Home Telephone () _____

City-State-Zip _____ Business Telephone () _____ Detach Here

CE SUMMARY

is Balance	\$2,752.68
ments and Credits	\$2,752.68
sh Advances	\$0.00
chases/Adjustments	\$4,420.32
ANCE CHARGES	\$77.25
w Balance	\$4,497.57

ACCOUNT INFORMATION

Statement Closing Date	03/13/06
Days in Billing Cycle	28
New Balance	\$4,497.57
Credit Line	\$6,000.00
Available Credit	\$1,502.43
Available Cash Advance**	\$1,502.43

ACCOUNT # 4104140014934039

Payment Due Date 04/07/06

MINIMUM PAYMENT DUE \$119.00

CALL 1-866-522-7587 TO MAKE YOUR
PAYMENT OVER THE PHONE OR
VISIT US ONLINE AT
WWW.CIRCUITCITYREWARDS.COM

PROMOTIONAL SUMMARY

Promotional Period	Average Daily Balance	Deferred Finance Charge	Accumulated Deferred Finance Charges	Promotional Payoff Balance	Promotional Ending Date
22 MOS NMP	\$218.00	0.0657%	(23.99%)	\$3.99	\$263.09 01/14/2008

ACCOUNT BALANCE MAY CONTAIN PURCHASES THAT REQUIRE A MINIMUM MONTHLY PAYMENT BY THE DUE DATE ON THIS STATEMENT. PLEASE REFER TO THE MINIMUM DUE AMOUNT FOR THAT AMOUNT. ACCUMULATED DEFERRED FINANCE CHARGES WILL BE DEDUCTED IF YOUR PROMOTIONAL BALANCE(S) IS PAID IN FULL BY THE PROMOTIONAL END DATE SHOWN IN THE PROMOTIONAL SUMMARY SECTION. THE PROMOTIONAL END DATE MAY DIFFER FROM YOUR DUE DATE.

TRANSACTION DETAIL

#	Transaction Date	Reference Number	Transactions	Charges & Credits
Purchases				
02/13	6044295110835675	BEST BUY 00003939 W HOLLYWOOD CA	1,765.98	
02/12	6044690441473768	SMART & FINAL CO. WEST LOS ANGELES	17.21	
02/12	6044980003861934	ASIAN KITCHEN CULVER CITY CA	9.71	
02/13	6045207599700376	BURGER KING # 9218 Q07 LOS ANGELES CA	3.78	
02/14	6046980002575183	QUIZNO'S VENICE & ROBERTSCULVER CITY CA	7.35	
02/15	6047585315218229	PIZZA HUT 07055015 CULVER CITY CA	14.60	
02/17	6048512022011284	NORM'S LA CIENEGA #50 LOS ANGELES CA	13.89	
02/18	6050049000289276	SUPER STAR BUFFET RESTAURANT CULVER CITY CA	16.75	
02/18	6050381831192627	RALPH'S #0284 SF4 CULVER CITY CA	12.75	
02/20	6051295111972634	BEST BUY 00003939 W HOLLYWOOD CA	8.65	
02/21	4889500000000000	CIRCUIT CITY CREDIT PURCHASE 142 DIGITAL VIDEO	82.24cr	

EXPLANATION OF CODES ON REVERSE
**CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
VIATIONS : "py" = Payment, "cr" = Credit
REFER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:
CHASE CARDMEMBER SERVICE
PO BOX 100045
KENNESAW, GA 30156-9245
See form on reverse side.

CHASE

Customer Name
 GARY J DAVIS

Account Number
 4104-1400-1493-4039

Page 2 of 3

Payment Tips

- Call 1-866-522-7587 to make your payment over the phone! (A small fee will apply.)
- Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- Checks should be made payable to Chase.
- Write your account number on your check or money order.
- Include the payment coupon with your payment in the envelope provided.
- Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE
 PO BOX 100044
 KENNESAW, GA 30156-9244

Transaction Date	Reference Number	Transactions	Charges & Credits
02/20	6052718000100573	WOK ON FIRE INC LOS ANGELES CA	26.17
02/20	6052383117291564	COMPUSA/GOOD GUYS #740 LOS ANGELES CA	151.54
02/20	605226759700368	BURGER KING # 9218 Q07 LOS ANGELES CA	2.48
02/21	6053384323115341	KFC 2610052 26100529 CULVER CITY CA	4.85
02/21	4889699004897000	CIRCUIT CITY CREDIT PURCHASE 121 30" AND LARGER TVs	933.53cr
02/22	6054000594427855	TWX "PWRSOS" MAGAZINE P&H 877-813-0001 NY	2.00
02/22	6055470096300020	TASTE OF INDIA - C CULVER CITY CA	14.27
02/22	6055138011473500	EZ NEW WEB LAUNDROMAT CULVER CITY CA	6.45
02/23	6055690551481334	SMART & FINAL CO. WEST LOS ANGECA	42.10
02/24	6056286299800195	PAPA JOHN'S PIZZA #2380 LOS ANGELES CA	19.73
02/24	6056286299800476	PAPA JOHN'S PIZZA #2380 LOS ANGELES CA	2.00
02/26	6058101912892422	IHOP #782 LOS ANGELES CA	12.07
02/27	6068123365012788	GABY'S MEDITERRANEAN R LOS ANGELES CA	17.70
02/27	6069763000102064	JITB #0293 00002931 LOS ANGELES CA	2.15
02/27	6069701066620476	HUS SZECHWAN LOS ANGELES CA	22.64
02/27	6069207589700437	BURGER KING # 9218 Q07 LOS ANGELES CA	2.48
03/02	6061000257186393	XM "SATELLITE RADIO 500-XMRADIO DC	19.94
03/03	0211022004959000	CIRCUIT CITY PURCHASE 126 PLASMA TV 127 MOUNTS	2,000.00
03/07	6067197310681034	PANDA EXPRESS 00006189 CULVER CITY CA	6.92
03/07	6067396799783853	RALPH'S #0086 SF4 CULVER CITY CA	29.43
03/07	6069442545100024	INDUSTRY CAFE AND CULVER CITY CA	9.75
03/09	6069293015400299	KRISTINA 8 ITALIAN LOS ANGELES CA	16.27
03/09	6069398348919784	AUTOZONE #6433 LOS ANGELES CA	4.32
03/10	6069398535629554	RALPH'S #0086 SF4 CULVER CITY CA	3.85
03/10	6069200079900237	20/20 VIDEO #12 LOS ANGELES CA	12.99
03/10	6070295111993272	BEST BUY 00001792 CULVER CITY CA	39.06
03/10	6070295111993322	BEST BUY 00001792 CULVER CITY CA	40.65
03/10	6070116340010813	BAJA FRESH 10142 CULVER CITY CA	7.63
03/11	6071503106450066	BESTBUYCOM 88994009 888-BESTBUY MN	20.54
03/12	6072120726208791	NEW PANDA BUFFET LOS ANGELES CA	10.80
03/13		PURCHASE "FINANCE CHARGE"	77.25
03/04	6065001000000010	Payments/Credits	
03/09	6066001000000019	ONLINE PMT RCVD-THANK YOU	1,008.00py
		ONLINE PMT RCVD-THANK YOU	730.91py

IMPORTANT INFORMATION

ATTENTION***
 ACCOUNT IS IN DISPUTE FOR \$396.43. THIS AMOUNT HAS NOT BEEN INCLUDED IN THE FINANCE CHARGE OR MINIMUM PAYMENT
 LATTONS.

EXPLANATION OF CODES ON REVERSE
 AVAILABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
 EXPLANATIONS : "py" = Payment, "cr" = Credit
 REFER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:
 CHASE CARDMEMBER SERVICE
 PO BOX 100044
 KENNESAW, GA 30156-9245
 See form on reverse side.

CHASE



Customer Name
GARY J DAVIS

Account Number
4104-1400-1493-4039

Page 3 of 3

Payment Tips

- Call 1-866-522-7587 to make your payment over the phone! (A small fee will apply.)
- Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- Checks should be made payable to Chase.
- Write your account number on your check or money order.
- Include the payment coupon with your payment in the envelope provided.
- Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE
PO BOX 100044
KENNESAW, GA 30156-9244

Use your Circuit City credit card and take advantage of special financing promotions available at your local Circuit City stores!

As a Valued Cardmember, you can claim high-quality merchandise from top brands such as Lenox, Harley-Davidson, Cross and many more! Just go to www.rewardcenter.com and enter 157511 where it asks for your certificate number. These products are not available to the general public, so act now!

Redeem your rewards points today and use your Rewards Certificates towards your next purchase at Circuit City. For every 500 points you earn, you'll receive a \$5 Rewards Certificate. Just visit circuitcityrewards.com anytime to check your point balance and redeem for Rewards Certificates.

RWARDS POINTS SUMMARY

Your Circuit City Rewards ID Number is 70021534100

The number of Rewards Points you have earned
(through 03/10/2006) 50,421

The total number of Rewards Points that are available
for you to redeem 1,790

The number of Rewards Points that are pending
in your account -2,369

INCE CHARGE SUMMARY

*	Average Daily Balance	Daily Periodic Rate***	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE	ANNUAL PERCENTAGE RATE	SEE REVERSE SIDE FOR IMPORTANT INFORMATION
Purchases A	\$4,232.35	0.0652%	23.75%	\$77.25	22.45%	
Purchases B	\$0.00	0.0652%	23.75%	\$0.00		
Cash Advances C	\$0.00	0.0761%	27.79%	\$0.00		

RIODIC RATE MAY VARY FROM MONTH TO MONTH

EXPLANATION OF CODES ON REVERSE
ABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
VIATIONS : "p" = Payment, "cr" = Credit
hour automated information call 1-866-522-7587
er Service Advisors are available Monday - Friday 10am - 9pm ET
ut your credit card lost or stolen 24 hours a day call (800) 898-4142
D. (Telephone Device for the Hearing Impaired), call (800) 825-1794
FER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:
CHASE CARDMEMBER SERVICE
PO BOX 100045
KENNESAW, GA 30156-9245
See form on reverse side.

CHASE

Case 2:06-cv-04804-DDP-RW

Bank, savings, money market accounts or other investment and trust accounts, or U.S. Treasury Savings Bonds, U.S. Savings Bonds, and U.S. Savings Bonds Red. We do not accept checks from foreign financial institutions. We will not cash. Write your account number on your check or money order. Payments must be accompanied by the payment coupon in the envelope provided with our address while the envelope containing the envelope cannot contain more than one payment or coupon, and there can be no staples, paper clips, tape or correspondence included with your payment. If your payment is in accordance with the payment instructions and is made available to us on any day except Saturday, 25 by 1:00 p.m. local time at our post office box designated for payment on this statement, we will credit the payment to your account as of that day. If your payment is in accordance with the payment instructions, but is made available to us or after 1:00 p.m. local time at our post office box designated for payment on this statement, we will credit it to your account as of the next day. If you do not know our payment instructions or if your payment is not sent by regular U.S. mail to our post office box designated for payments, crediting of your payment may be delayed for up to 5 days. Payments made electronically through our automated telephone service, Customer Service Advisor, or over the web will be subject to any processing times disclosed by those payments.

Account Information Reported to Credit Bureaus: We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report. If you think we have reported inaccurate information or if you believe you may suffer a loss due to inaccurate information in your credit report, you may write to us at the Customer Service address listed on your billing statement.

Conditional Payment: Any payment check or other form of payment that you send us for less than the full balance due that is marked "paid in full" or contains a similar notation, or that you otherwise tender in full satisfaction of a disputed amount, must be sent to Customer Service, P.O. Box 140045, Roswell, GA 30136. We receive all our sights reporting these payments if: (a) if it is determined there is an valid dispute of any such check it is marked at any other address, we may accept the check and you will still owe any remaining balance; We may refuse to accept any such payment by returning it to you, not cashing it or destroying it. All other payments that you make should be sent to the appropriate payment address.

Explanation of Finance Charges: The balance calculation method for purchases is the **First-Cycle Average Daily Balance** (including over purchases). If your annual percentage rate (APR) is variable, the index and margin used to determine that rate and its corresponding APR are described in your Creditmaster Agreement, as amended. Finance charges for each billing cycle are computed for transactions in the following manner:

We compute a portion of your finance charge by multiplying a daily periodic rate by a daily balance for each day in the billing cycle for each balance type. We calculate periodic finance charges separately for each balance associated with a different balance type. These calculations for each balance type may include different transaction with the same daily periodic rates. The balance types are the average daily balance (AD).

• **Balance Type A – Purchases (including over Purchases)** are your regular purchases to which Interest Free Special Purchase and Special Purchase promotional terms do not apply or have terminated, and also includes all unpaid daily transaction charges, unpaid payment fees and any other charges except cash advances and finance charges on cash advances.

• **Balance Type B – Previous Cycle Purchases (including previous cycle over purchases)** are regular purchases for the previous billing cycle using the same kinds of purchase and other charges as are used in computing Balance Type A for the current billing cycle.

• **Balance Type C – Cash Advances (including over cash Advances)** are your regular cash advances to which Reduced Rate Cash Advance promotional terms do not apply and finance charges on unpaid cash advances.

• **Balance Type D – Interest Free Special Purchases (including over Interest Free Special Purchases)** are special promotional purchase balances and **Balance Type E – Interest Free Cash Advances (including over Interest Free Cash Advances)** are special promotional cash advance balances. Finance charges resulting on these balance types are not added to your account balance, but instead they are accumulated from billing cycle in billing cycle and passed to your account on Accumulated Finance Charges until the Interest Free Special Purchases or Interest Free Cash Advances has not been paid in full by the end of the billing period specified in the promotional offer. Accumulated Finance Charges are not be added to your account balance and the interest free promotion will terminate if the default rate takes effect on your account balance because you default under your Agreement. Until accumulated finance charges are passed to your account, we refer to these amounts as "Accumulated Reduced Finance Charges." For each billing cycle during which Accumulated Finance Charges for any terminated Interest Free Special Purchase or Interest Free Cash Advances are passed to your account, your statement will also disclose the average daily balance of such purchases or cash advances for that billing cycle.

• **Balance Type F – Special Purchases (including over Special Purchases)** are special promotional purchase balances to which special promotional terms (other than Interest Free terms described above) apply until the expiration of any time period specified in the promotional offer. A Special Purchase promotion also will terminate if the default rate takes effect on your account balance because you default under your Agreement.

• **Balance Type G – Reduced Rate Cash Advances (including over Reduced Rate Cash Advances)** are special promotional cash advance balances to which a special reduced daily periodic rate applies.

To determine the daily balance for each balance type we (i) take the beginning balance of transactions of that type in your account each day (including any unpaid finance charges, fees or other charges applicable to that balance type), and (ii) add any new transactions of that type and add any new fees or other charges of the kind referred to in (i) above; and (iii) subtract the applicable portions of any payments and credits applied to your account as of that day, and (iv) Balance Types B, C and F subtract the unpaid balances of any purchases or cash advances for which the Interest Free Special Purchase feature, Interest Free Cash Advances or Special Purchase feature, as applicable, terminates as of that day.

Transactions, balance transfers/overadvances, check fees and cash advance fees are added to a balance as of the date of the transaction or a later date of our choice. Other charges of the kind referred to in (i) above are added as of the date the charge is posted to your account. Accumulated Finance Charges on any Interest Free Special Purchases are added to Balance Type A, and accumulated Finance Charges on any Interest Free Special Cash Advances are added to

Balance Type C, as of the first day of the next billing cycle following the day on which the Interest Free feature expires if the Interest Free Special Purchase or Cash Advances have not been paid in full by that date, or as of the first day of the billing cycle that includes the day on which the Interest Free feature is terminated only because the default rate takes effect on a account balance. This gives or the daily balance for each balance type for each day in the billing cycle for each balance type. We add each day's daily periodic finance charge to the beginning daily balance for the next day.

There is a minimum finance charge of \$1 on purchases (with regard to balance types A and B and a minimum finance charge of \$1 on cash advances in any billing cycle in which you owe periodic finance charges on these balance types. There is a maximum fee finance charge if each balance type has a balance transfer/cash advance check, or cash advance, in the amount stated in your Creditmaster Agreement, as amended. To get the total periodic finance charge for the billing cycle, we add all of the daily periodic finance charges for each day during the billing cycle for each balance type. Your total finance charge for the billing cycle is the sum of (1) any balance transfer/cash advance check fee and cash advance transaction fees, (2) the periodic finance charges computed as described above on each advance balances in balance types C, E and G, and (3) the periodic finance charges computed as described above a purchase balance types A, B, D, and F except that the periodic finance charges on balance type D and E are accumulated from billing cycle to billing cycle and are only added to your balance or accumulated finance charges under the circumstances mentioned above.

For each balance type we calculate an average daily balance (including over transactions) for the billing cycle by adding all your daily balances and dividing that amount by the number of days in the billing cycle. If you multiply the average daily balance for a balance type by the balance type's daily periodic rate, and multiply the result by the number of days in the billing cycle, the total will equal the periodic finance charges for that balance type attributable to that billing cycle, except for other variables due to rounding.

Grace Period: We assess periodic finance charges on a transaction, fee, or finance charge from the date it is added to your daily balance until payment in full is received on your account. However, we do not charge periodic finance charges on new purchases billed during a billing cycle if we receive payment of your New Balance by the date and time your payment is due on shown on your billing statement and we received payment of your New Balance or your previous billing statement by the date and time your payment was due or shown on the billing statement. This exception or "grace period" of at least 20 days only applies if payment is made, except it does not apply to Balance Type F – Special Purchases, balance transfers, balance transfers/cash advances or any cash advances, including cash advance checks. A finance charge is computed on Balance Type B – Previous Cycle Purchases only if the New Balance shown on your billing statement for the previous billing cycle was not paid in full by the date and time shown on your previous billing statement and the Previous Balance shown on your billing statement for the previous billing cycle was zero, was a credit balance, or we paid in full during the previous billing cycle.

Annual Statement Fee: If your account has an annual fee, it will be billed each year at a monthly installment, whether or not you are your account, and you agree to pay it when billed. The annual fee is non-refundable unless you notify us that you wish to close your account within 30 days of that date and mail your statement on which the annual fee is charged and at the same time, you pay your outstanding balance in full. Your payment of the annual fee does not affect our right to close your account and to seek your right to sue damages on your account. If your account is closed by you or us, we will continue to charge the annual fee until you pay your outstanding balance in full and terminate your account relationship.